

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ALPHONSO VERNELL FRAZIER, II,

Plaintiff,

v.

JUSTIN SMITH; ANGIE CIRCO;  
MARLENE NOVOTNY; and SCOTT  
FOX; all in their individual capacities,

Defendants.

**8:20CV520**

**ORDER**

This matter is before the Court to calculate and collect appellate filing fees pursuant to *Henderson v. Norris*, 129 F.3d 481, 484-85 (8th Cir. 1997). The Prison Litigation Reform Act (“PLRA”) requires prisoner plaintiffs to pay the full amount of the \$505.00 appellate filing fees by making monthly payments to the Court, even if the prisoner is proceeding in forma pauperis. *See* 28 U.S.C. § 1915(b). The PLRA “makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.” *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 952 (D. Neb. 2001) (citing *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997)). The appellate filing fees are assessed when the Court receives the prisoner’s notice of appeal. *See Henderson*, 129 F.3d at 485.

Under the PLRA, plaintiff Alphonso Vernell Frazier, II (“Frazier”) must pay an initial partial filing fee in the amount of 20 percent of the greater of his average monthly account balance or average monthly deposits for the six months preceding the filing of the notice of appeal. *See* 28 U.S.C. § 1915(b)(1). On the records before the Court (Filing No. 57), the initial partial filing fee is \$173.04, based on an average monthly account balance of \$865.20.

In addition to the initial partial filing fee, Frazier must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the Clerk of Court each time the amount in the account exceeds \$10 until the filing fees are paid.

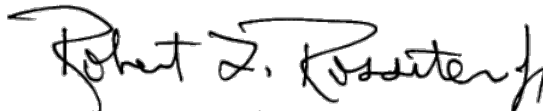
28 U.S.C. § 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to this procedure. Accordingly,

IT IS ORDERED:

1. Plaintiff Alphonso Vernell Frazier, II shall pay an initial partial filing fee of \$173.04 within 30 days unless an extension of time is granted in response to a written motion.
2. After payment of the initial partial filing fee, Frazier’s institution shall collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2), quoted above, and shall forward those installments to the Court.
3. The Clerk of Court is directed to send a copy of this order to the Eighth Circuit Court of Appeals.
4. The Clerk of Court is also directed to send a copy of this order to the appropriate official at Frazier’s institution.

Dated this 1st day of March 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.  
Chief United States District Judge